

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Nils Erik ENGSTROM

Serial No.: 10/580,191

Filed: February 26, 2007

Confirmation: 1806

Group Art Unit: 3635

Examiner: SAFAVI,
MICHAEL

For: **JOINT FOR A PANEL**

**PETITION TO EXERCISE SUPERVISORY AUTHORITY UNDER 37 CFR
1.181(a) (3)**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

CONCISE STATEMENT OF THE FACTS

Applicants are in receipt of the communication from the Office dated January 26, 2011, entitled "Notice of Non-Compliant Pre-Appeal Brief Request for Review" stating that the Request for Review filed on January 6, 2011, is non-compliant for the following reasons:

"The arguments accompanying the Request exceed five (5) pages, and, "an After-Final proposed Amendment was filed with the Request, or after filing of the Request but before a Panel decision from the Pre-Appeal Brief conference".

These statements are erroneous and applicants respectfully request that the Director exercise supervisory authority over Examiner Safavi and/or Sharmela Coates to enter the Pre-Appeal Brief for action by the conferee panel under the OG Notice of 1296/OG/67(July 12, 2005), as extended.

BRIEF SUMMARY OF THE FACTS

Claims 1-7 and 10-13 (all the claims pending prior to Final Rejection) were finally rejected in the Office Action of October 6, 2010.

Applicant filed (prior to the filing of a Pre-Appeal Brief) a single Amendment After Final Rejection for the sole purpose of cancelling claims 10-11 (and for no other reason). Thereafter, applicant filed its Pre-Appeal Brief.

A copy of the USPTO Public PAIR image file wrapper for the above-identified application indicates that an Amendment was filed after the Notice of Appeal was filed January 6, 2011, (see Exhibit 1). However, applicants attach as Exhibits 2 and 3, respectively, their electronic acknowledgement receipts showing that the Amendment After Final Rejection was filed prior to the Notice of Appeal (not after as recorded on the Public PAIR Page). Accordingly, the Public PAIR page is in error and should be disregarded.

In addition, the sole purpose of the Amendment After Final Rejection was to reduce the issues in the Pre-Appeal Brief (as well as on Appeal) and thus the Amendment After Final Rejection would not have created any additional issues for the Panel Decision. Thus, the Amendment After Final satisfies the conditions of the OG Notice (copy attached as Exhibit 4) for “in the proper situation it can save both the resources of the applicant and the Office”.

Secondly, regarding the allegation that the “arguments accompanying the Request exceed five (5) pages, again such is erroneous. The arguments accompanying the Pre-Appeal Brief Request for Review are exactly five pages. There is an Exhibit 1 of two sheets of Drawings to assist the Panel in understanding the arguments, rather than having to refer to the Drawings in the application, but such drawings were provided only as a courtesy to the Panel and can be disregarded if the Panel does not appreciate this

courtesy.

SPECIFIC RELIEF REQUESTED


The entire purpose of the Pre-Appeal Brief Conference Pilot Program is to reduce the burden on the USPTO Board of Appeals and “is intended to spare applicants the added time and expense of preparing Appeal Brief if a Panel Review determines an application is not in condition for Appeal”. Applicants respectfully submit that the present application, by virtue of the Pre-Appeal Brief qualifies for this Pilot Program. Reducing the number of claims by cancellation is consistent with the objective of this Pilot Program and does not in any way affect the Panel’s Review of the remaining

None of the reasons set forth in the Notice of Non-Compliant Pre-Appeal Brief Request for Review are valid or serve the intent of the Pilot Program and the supervisory authority of the Director is respectfully requested to compel entry of the Pre-Appeal Request for Review in order to have a Panel Decision on the same.

Applicants believe that no fee is due in connection with this Petition but if any fee is due it may be charged to the undersigned’s Deposit Account No. 14-1437, under Order No. 8688.048.US0000.

Date: March 4, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TP Pavelko', with a long horizontal flourish extending to the right.

Thomas P. Pavelko
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Facsimile: (202) 659-0105

EXHIBIT 1



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10/580,191

Joint for a Panel



Select New Case	Application Data	Transaction History	Image File Wrapper	Continuity Data	Foreign Priority	Published Documents	Address & Attorney/Agent
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This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download.

Available Documents

Mail Room Date	Document Code	Document Description	Document Category	Page Count	PDF
02-15-2011	CTAV	Advisory Action (PTOL-303)	PROSECUTION	2	
01-26-2011	CTMS	Miscellaneous Action with SSP	PROSECUTION	2	
01-06-2011	AP/A	Amendment/Argument after Notice of Appeal Applicant	PROSECUTION	1	
01-06-2011	REM	Arguments/Remarks Made in an Amendment	PROSECUTION	1	
01-06-2011	N417	EFS Acknowledgment Receipt	PROSECUTION	2	
01-06-2011	AP.PRE.REQ	Pre-Brief Conference request	PROSECUTION	8	
01-06-2011	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2	
01-06-2011	N417	EFS Acknowledgment Receipt	PROSECUTION	2	
01-06-2011	N/AP	Notice of Appeal Filed	PROSECUTION	1	
01-06-2011	CLM	Claims	PROSECUTION	3	
10-06-2010	CTFR	Final Rejection	PROSECUTION	12	
10-06-2010	892	List of references cited by examiner	PRIOR ART	1	
10-06-2010	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1	
07-12-2010	A...	Amendment/Reg. Reconsideration-After Non-Final Reject	PROSECUTION	1	
07-12-2010	ABST	Abstract	PROSECUTION	1	
07-12-2010	SPEC	Specification	PROSECUTION	4	
07-12-2010	CLM	Claims	PROSECUTION	4	
07-12-2010	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	5	
07-12-2010	ABST	Abstract	PROSECUTION	1	
07-12-2010	DRW	Drawings-only black and white line drawings	PROSECUTION	3	
07-12-2010	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2	
07-12-2010	N417	EFS Acknowledgment Receipt	PROSECUTION	3	
07-12-2010	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1	
07-12-2010	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1	
03-12-2010	M327	Miscellaneous Communication to Applicant - No Action Count	PROSECUTION	3	

03-12-2010	OA.APPENDIX	<u>Office Action Appendix</u>	PROSECUTION	1	<input type="checkbox"/>
03-10-2010	CTNF	<u>Non-Final Rejection</u>	PROSECUTION	22	<input type="checkbox"/>
03-10-2010	1449	<u>List of References cited by applicant and considered by examiner</u>	PROSECUTION	2	<input type="checkbox"/>
03-10-2010	FWCLM	<u>Index of Claims</u>	PROSECUTION	1	<input type="checkbox"/>
03-10-2010	SRFW	<u>Search information including classification, databases and other search related notes</u>	PROSECUTION	1	<input type="checkbox"/>
03-10-2010	SRNT	<u>Examiner's search strategy and results</u>	PROSECUTION	2	<input type="checkbox"/>
03-10-2010	SPEC.NE	<u>Specification-Amendment Not Entered</u>	PROSECUTION	1	<input type="checkbox"/>
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		<u>considered by examiner</u>			
		<u>Search information including</u>			
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10-18-2007	NTC.PUB	<u>Notice of Publication</u>	PROSECUTION	1	<input type="checkbox"/>
10-04-2007	EBCC.AD	<u>Notice of Change of Address placed in File Wrapper due to EBC Customer Number update</u>	PROSECUTION	1	<input type="checkbox"/>
09-20-2007	FWCLM	<u>Index of Claims</u>	PROSECUTION	1	<input type="checkbox"/>
09-20-2007	WFEE	<u>Fee Worksheet (PTO- 875)</u>	PROSECUTION	1	<input type="checkbox"/>
07-09-2007	APP.FILE.REC	<u>Filing Receipt</u>	PROSECUTION	3	<input type="checkbox"/>
07-09-2007	M903	<u>Notice of DO/EO Acceptance Mailed</u>	PROSECUTION	2	<input type="checkbox"/>
02-26-2007	PEFR	<u>Applicant Response to Pre-Exam Formalities Notice</u>	PROSECUTION	1	<input type="checkbox"/>
02-26-2007	OATH	<u>Oath or Declaration filed</u>	PROSECUTION	2	<input type="checkbox"/>
02-01-2007	M905	<u>Notice of DO/EO Missing Requirements Mailed</u>	PROSECUTION	2	<input type="checkbox"/>
01-22-2007	STATUS.LET	<u>Request for status of Application</u>	PROSECUTION	1	<input type="checkbox"/>
05-23-2006	TRNA	<u>Transmittal of New Application</u>	PROSECUTION	3	<input type="checkbox"/>
05-23-2006	136A	<u>Authorization for Extension of Time all replies</u>	PROSECUTION	3	<input type="checkbox"/>
05-23-2006	SPEC	<u>Specification</u>	PROSECUTION	12	<input type="checkbox"/>
05-23-2006	CLM	<u>Claims</u>	PROSECUTION	3	<input type="checkbox"/>
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05-23-2006	DRW	<u>Drawings-only black and white line drawings</u>	PROSECUTION	3	<input type="checkbox"/>
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05-23-2006	A.PE	Preliminary Amendment	PROSECUTION	1	<input type="checkbox"/>
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05-23-2006	FOR	Foreign Reference	PRIOR ART	18	<input type="checkbox"/>
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05-23-2006	FOR	Foreign Reference	PRIOR ART	11	<input type="checkbox"/>
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05-23-2006	NPL	NPL Documents	PRIOR ART	6	<input type="checkbox"/>
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05-23-2006	ADS	Application Data Sheet	PROSECUTION	2	<input type="checkbox"/>
05-23-2006	LET.	Miscellaneous Incoming Letter	PROSECUTION	1	<input type="checkbox"/>
05-23-2006	371P	Documents submitted with 371 Applications	PROSECUTION	1	<input type="checkbox"/>
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05-23-2006	P.409.IN	IPEA/409 - Int'l Prelim Report on Patentability	PROSECUTION	7	<input type="checkbox"/>
05-23-2006	371P	Documents submitted with 371 Applications	PROSECUTION	5	<input type="checkbox"/>
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05-23-2006	ABST	Abstract	PROSECUTION	2	<input type="checkbox"/>
05-23-2006	DRW	Drawings-only black and white line drawings	PROSECUTION	3	<input type="checkbox"/>
05-23-2006	FRPR	Certified Copy of Foreign Priority Application	PROSECUTION	20	<input type="checkbox"/>
05-23-2006	IMIS	Miscellaneous Internal Document	PROSECUTION	1	<input type="checkbox"/>
05-23-2006	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1	<input type="checkbox"/>
05-23-2006	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1	<input type="checkbox"/>

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EXHIBIT 2

Electronic Acknowledgement Receipt

EFS ID:	9182806
Application Number:	10580191
International Application Number:	
Confirmation Number:	1806
Title of Invention:	Joint for a Panel
First Named Inventor/Applicant Name:	Nils-Erik Engstrom
Customer Number:	74217
Filer:	Thomas P. Pavelko/Renee Tisdale
Filer Authorized By:	Thomas P. Pavelko
Attorney Docket Number:	8688.048.US0000
Receipt Date:	06-JAN-2011
Filing Date:	26-FEB-2007
Time Stamp:	18:46:56
Application Type:	U.S. National Stage under 35 USC 371

Payment information:

Submitted with Payment		no			
File Listing:					
Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		AMENDMENTAFTERFINALREJECTION20110106.pdf	805891	yes	5
			2c807da8bc4bb999a5c25bc594440628b9360f03		

	Multipart Description/PDF files in .zip description		
	Document Description	Start	End
	Amendment After Final	1	1
	Claims	2	4
	Applicant Arguments/Remarks Made in an Amendment	5	5

Warnings:

Information:

Total Files Size (in bytes):	805891
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This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

EXHIBIT 3

Electronic Acknowledgement Receipt

EFS ID:	9182909
Application Number:	10580191
International Application Number:	
Confirmation Number:	1806
Title of Invention:	Joint for a Panel
First Named Inventor/Applicant Name:	Nils-Erik Engstrom
Customer Number:	74217
Filer:	Thomas P. Pavelko/Renee Tisdale
Filer Authorized By:	Thomas P. Pavelko
Attorney Docket Number:	8688.048.US0000
Receipt Date:	06-JAN-2011
Filing Date:	26-FEB-2007
Time Stamp:	19:01:03
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		NOTICEOFAPPEALPREAPPEALB RIEF20110106.pdf	2480563 b56091aa41654dfadfcab10b6ee75660ea2 04559	yes	9

Multipart Description/PDF files in .zip description

Document Description	Start	End
Notice of Appeal Filed	1	1
Amendment/Argument after Notice of Appeal	2	6
Miscellaneous Incoming Letter	7	9

Warnings:

Information:

2	Fee Worksheet (PTO-875)	fee-info.pdf	29752 71a41f5fb5c4ebd1a48bb02bc0bb6deb8d7 61df8	no	2
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Warnings:

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

EXHIBIT 4

United States Patent and Trademark Office OG Notices: 12 July 2005

New Pre-Appeal Brief Conference Pilot Program

Effective Date: Effective upon publication of this notice

This new program offers applicants an avenue to request that a panel of examiners formally review the legal and factual basis of the rejections in their application prior to the filing of an appeal brief. Effective immediately, the USPTO is offering applicants an optional procedure to review the examiner's rejection prior to the actual filing of an appeal brief. The program is intended to spare applicants the added time and expense of preparing an appeal brief if a panel review determines an application is not in condition for appeal. Although this procedure will not be appropriate in every appealed application, in the proper situations it can save both the resources of the applicant and the Office. Applicants continue to have available to them the normal practice and procedures already in effect under Part 41 of the Title 37 of the Code of Federal Regulations relating to appeals and practice before the Board of Patent Appeals and Interferences.

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1. General Provisions:

. What is this program?

Under the current practice every applicant whose claims have been twice rejected may appeal the examiner's decision to the Board of Patent Appeals and Interferences. To do so, the applicant first files a notice of appeal accompanied by the appropriate fee i within the appropriate time period ii. Within two months from the date of the filing of the notice of appeal, applicant must file an appeal brief accompanied by the appropriate fee iii. Applicants may buy extensions of time for filing the appeal brief.

This pilot program offers applicants an opportunity to request a review of identified matters on appeal employing an appeal conference currently employed in the Office, but prior to the filing of an appeal brief. The goals of the program are (1) to identify the presence or absence of clearly improper rejections based upon error(s) in facts, or (2) to identify the omission or presence of essential elements required to establish a prima facie rejection.

. Who can use this program?

Any applicant who has filed a notice of appeal and who wants a panel of experienced examiners to perform a detailed review of appealable issues within a set period of time.

. How to decide if you should request this panel review?

If the applicant feels the rejections of record are clearly not proper and are without basis, then filing this request may result in a panel decision that eliminates the need to file an appeal brief. This should be based upon a clear legal or factual deficiency in the rejections rather than an interpretation of the claims or prior art teachings. The latter is more appropriate for the traditional appeal process currently employed by applicants.

. What happens during a panel review?

A panel of examiners (including the examiner of record) will consider the merits of each ground of rejection for which appeal has been requested and will issue a written decision as to the status of the application.

. When should you file an appeal brief or other correspondence?

This program is designed to allow applicants who think there is a clear deficiency in the prima facie case in support of a rejection to file the request at the same time that they file a notice of appeal. This affords the Office the best opportunity to ensure that applicant will promptly receive a decision on the request. If the request is filed with the notice of appeal, the period of time for filing the appeal brief will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request.

. What actions will terminate the panel's review?

If applicant files any of the following responses after filing a request, but prior to a decision by the appointed panel of examiners assigned to conduct the review, the review process will end and a decision will not be made on the merits of the request:

- an appeal brief
- a request for continued examination (RCE)
- an after-final amendment
- an affidavit or other evidence
- an express abandonment

A request for the declaration of an interference will also result in an end to the review process. Applicant will be promptly notified by an Office communication of termination or of dismissal of the request. If any of the above-noted actions occur, the period for filing the appeal brief (if applicable) will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request.

2. Conditions Necessary to Request a Panel Review:

- Applicant must file a notice of appeal in compliance with 37 CFR

41.31.

- Applicant must file the request with the filing of a notice of appeal and before the filing of an appeal brief. 1

3. Content of Request:

a. File the request and accompanying arguments in a separate paper entitled, "Pre-Appeal Brief Request for Review". A sample request form has been created and is available on the USPTO Internet Website, on the forms page, as PTO/SB/33.

b. In five (5) or less total pages, provide a succinct, concise and focused set of arguments for which the review is being requested.

c. File the request with the notice of appeal.

d. Address the notice of appeal and the request to

- Mail Stop AF
- Commissioner for Patents
- P.O. Box 1450
- Alexandria, VA 22313-1450

- Fax the notice of appeal and the request to the Central FAX Number (now 571 273-8300)

- Hand carry the notice of appeal and the request to the

USPTO Customer Service Window, ATTN: Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314

e. No after-final or proposed amendments may accompany the request. iv

A request that fails to comply with the above noted submission requirements may be dismissed.

4. Content of Remarks or Arguments:

The request should specify-

- . clear errors in the examiner's rejections; or
- . the examiner's omissions of one or more essential elements needed for a prima facie rejection.

For example, the request should concisely point out that a limitation is not met by a reference or the examiner failed to show proper motivation for making a modification in an obviousness rejection (35 U.S.C. 103). Applicants are encouraged to refer to arguments already of record rather than repeating them in the request. This may be done by simply referring to a prior submission by paper number and the relevant portions thereof (e.g., see paper number 3 at pages 4 to 6). However, references such as "see the arguments of record" or "see paper number X" are not helpful and

will just obfuscate the real issues for review.

The request may not be more than five (5) pages total and the remarks should be drafted with the expectation that for a clear error in fact or other deficiency, a long detailed explanation is not needed. Requests are limited to appealable, not petitionable matters.

Any actual issues lacking factual basis, including interpretations of the prior art teachings or claim scope as contrasted with clear error in facts, are appropriate for the traditional appeal process and submission of the appeal brief. For grounds where a clear issue on proper interpretation exists, applicant is advised to proceed to appeal with the timely filing of the appeal brief. This program is not intended to be, and is not, an alternative for filing an appeal.

5. USPTO Consideration of the Request:

Upon receipt of a properly filed request, a Technology Center Art Unit supervisor will designate a panel of examiners experienced in the field of technology to review the applicant's remarks and the examiner's rejections. The panel will include at least a supervisor and the examiner of record. The applicant will not be permitted to attend the review and no interviews will be granted prior to issuance of the panel's decision.

The panel members will review the rejection(s) identified by applicant in the request. They will also review the application and the appropriate evidence in support of the rejections to the extent necessary. The panel will then decide if an issue for appeal is, in fact, present in the record. The Office should mail a decision within 45 days of receipt of a properly filed request.

6. Format of Panel Decision:

After the review is complete, the Office will mail a decision on the status of the application. The decision will state one of the following:

- . Finding 1: The application remains under appeal because there is at least one actual issue for appeal.
- . Finding 2: Prosecution on the merits is reopened and an appropriate Office communication will follow in due course. In appropriate circumstances, a proposed amendment may accompany the panel's decision proposing changes that, if accepted, may result in an indication of allowability for the contested claim(s).
- . Finding 3: The application is allowed on the existing claims and prosecution remains closed.
- . Finding 4: The request fails to comply with the submission requirements and is dismissed.

The decision will summarize the status of the pending claims (still rejected, withdrawn rejections, objected to or allowable claims).

A decision by a pre-appeal brief conference panel to withdraw the rejections of any or all of the claims on appeal is not a decision by a panel of the Board of Patent Appeals and Interferences, and, as such, would

not result in any patent term extension of adjustment under 35 U.S.C. Sec. 154(b) (37 CFR 1.701(a)(3) and 1.702(e)).

The decision will not contain any additional grounds of rejection or any restatement of previously made rejections. Such matters will be addressed, as appropriate, in the Examiner's Answer.

7. Time Periods Before/After a Panel Decision:

- . The request must be filed with the filing of a notice of appeal and before the filing of the appeal brief. No extensions of time are available for filing the request for review.
- . The time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. To the extent that any existing USPTO rule is inconsistent with this pilot program, the rule is waived until regulations directed to pre-appeal brief conferences are promulgated, or the pilot program is ended. For example, if a request for a pre-appeal brief conference is filed with a notice of appeal, the time period set in 37 CFR 41.37(a)(1) is waived so that an appeal will not stand dismissed if an appeal brief is not filed within two months of the filing date of a notice of appeal, but is filed within one month of the decision on the request.

Applicant's period for filing the appeal brief or other appropriate response ends on the mailing date of a panel decision that indicates all claims are allowed or that prosecution is reopened.

8. Administrative Matters:

- . Applicants should ensure that requests are mailed or faxed with the notice of appeal to ensure timely filing. The request should contain a certificate of mailing or transmission under 37 CFR 1.8 and be listed on any postcard receipt (MPEP 503).
- . No supplemental requests or arguments will be accepted.
- . The notice of appeal fee is not refundable, even in the event of a decision favorable to applicant.
- . A request filed after the date of receipt of the notice of appeal will be dismissed as untimely.
- . This procedure does not affect petitions to invoke supervisory authority under 37 CFR 1.181 because such petitions address procedural matters, not appealable, matters.
- . Panel decisions will not be petitionable because a decision to maintain a rejection is subject to appeal.
- . A pre-appeal brief conference panel decision that the application remains under appeal is not final agency action for purposes of court review. An applicant dissatisfied with the result of the appeal conference must pursue the appeal before the Board of Patent Appeals and Interferences.
- . This process does not apply to reexamination proceedings.

- . Following a panel review under this pilot program, the examiner retains the option to reopen prosecution or to allow an application after the filing of an appeal brief. This unlikely situation might arise, for example, where new arguments or evidence are presented in the appeal brief.
- . This pilot program will run for at least six months from its effective date. The Office may extend, terminate, revise or otherwise take appropriate action after evaluating its effectiveness at the end of that period. If the program is to be made permanent, the Office will promulgate the appropriate changes to title 37 of the Code of Federal Regulations.

Please direct inquiries with respect to a pending request for a pre-appeal brief conference to the examiner to whom the patent application is assigned, or the examiner's immediate supervisor. Please direct comments and inquiries on this pilot program to Anton Fetting via email addressed to anton.fetting@uspto.gov. You may also contact Mr. Fetting at (571) 272-7701.

June 20, 2005

JOSEPH J. ROLLA
Deputy Commissioner for
Patent Examination Policy

1 Under this pilot program, the request must be filed with the notice of appeal. The Office is considering, as part of a more permanent implementation of the pre-appeal brief conference program, permitting applicants to file the request within two months (non-extendable) of the receipt of the notice of appeal for a fee (\$130.00), in which case the period for filing an appeal brief would simply be the two-month period set in 37 CFR 41.37(a) (i.e., the mailing of a decision on the request would not provide any new time period for filing the appeal brief). This procedure would be included to encourage applicants to file the request with the notice of appeal and thereby provide the best opportunity for the Office to provide the decision in a timely manner.

- i Set forth in 37 CFR 41.20(b) (1)
- ii See 37 CFR 1.134
- iii Set forth in 37 CFR 41.20(b) (2)
- iv 37 CFR 41.33(a)